

CALIFORNIA BOARD OF ACCOUNTANCY

INITIAL STATEMENT OF REASONS

Hearing Date: July 21, 2011

Subject Matter of Proposed Regulations: Supervision, Master's Degree, and Disciplinary Guidelines

Sections Affected:

1. Repeal Section 9 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal would delete an outdated section of the Board's regulations.

Factual Basis/Rationale:

This section became outdated when it became inoperative by its own terms on January 1, 2010.

2. Repeal Section 11.5 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal would delete an outdated section of the Board's regulations.

Factual Basis/Rationale:

This section became outdated when it became inoperative by its own terms on January 1, 2010.

3. Add Section 11.5 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal would specify that a Master's Degree in Accounting, Taxation, or Laws in Taxation would be equivalent to completing the 20 semester hours of accounting education required by Section 5094(b) of the Business and Professions Code.

In addition, this proposal would maintain the definition of "satisfactory evidence" that was in Title 16, California Code of Regulations Section 9 that became inoperative on January 1, 2010, and is currently also in Section 9.2.

Factual Basis/Rationale:

Per Business and Professions Code §5094.6(c), no later than January 1, 2012, the Board is required to adopt by regulation guidelines for accounting study to be included as part of the education required for licensure as a certified public accountant. In adopting such regulations, the Board is required to consider the views of the Board's Accounting Education Advisory Committee. The Accounting Education Advisory Committee recommended this change to the Board at the Board's March, 2011, meeting. The committee members expressed confidence that students who complete these specified master's programs have received a quality, well-thought out education that should be considered substantially equivalent to meeting the 20 semester hours of accounting study. Further, this proposal is necessary to clarify how an applicant would prove to the Board's satisfaction that the applicant had obtained the necessary education to meet the Board's standards for licensure.

4. Amend Sections 12 and 12.5 of Title 16 of the California Code of Regulations

Specific Purpose:

Existing law explains what general experience is necessary to qualify for the certified public accountant license, including that such experience "must be supervised by a person holding a valid license or comparable authority to practice public accounting..." This proposal would define supervised experience to mean that a supervisor must review and evaluate an applicant's work on a routine and recurring basis and shall have authority or oversight over the applicant. It clarifies that experience may be acquired in a public accounting firm, a private industry company, or governmental agency. It excludes from qualifying experience "experience acquired in academia." It also clarifies that if the supervisor is the owner of the firm or company, a second verifying signature is not required.

The proposal for Section 12 incorporates Form 11A-29 (5/11) and Form 11A-29A (5/11) by reference. Both of these forms would require supervisors to attest that the applicant has received specified supervised experience during the time period indicated. Form 11A-29 (5/11) "Certificate of General Experience (Public Accounting)" specifically requires:

- (1) Disclosure of full name of applicant and last 4 digits of the Social Security number;
- (2) Disclosure of the dates the applicant was under supervision and obtained qualifying general accounting experience;
- (3) Disclosure of the business' name, address and telephone number;
- (4) Certification and signature by the supervisor(s) that the applicant has been supervised or employed by the supervisor or his or her firm for the time period indicated and has completed general accounting experience;
- (5) Disclosure of whether the supervisor is a sole proprietor, partner, shareholder

or other CPA and the supervisor's certificate number and the state/authority where the certificate is issued.

Form 11A-29A (5/11) "Certificate of General Experience (Private Industry or Government)" specifically requires:

- (1) Disclosure of full name of applicant and last 4 digits of the Social Security number;
- (2) Disclosure of the dates the applicant was under supervision and obtained qualifying general accounting experience;
- (3) Disclosure of the business' name, address and telephone number;
- (4) Certification and signature by the supervisor(s) that the applicant has been supervised or employed by the supervisor or his or her business/agency for the time period indicated and has completed general accounting experience;
- (5) Disclosure of the supervisor's certificate number, the state of issuance and whether the supervisor has an ownership interest in the business.

The proposal for Section 12.5 incorporates Form 11A-6A (5/11) and Form 11A-6 (5/11) by reference. Both of these forms would require the employer to attest to the time periods that the applicant was supervised, the qualifying experience received, and to summarize the attest experience hours gained under supervision. The proposal also provides that the Board may approve other forms of verification for those who may not be able to obtain the verification on these forms.

Specifically, Form 11A-6 (5/11) "Certificate of Attest Experience (Private Industry or Government)" requires:

- (1) Disclosure of full name of applicant and last 4 digits of the Social Security number;
- (2) Disclosure of the dates the applicant was under supervision and obtained qualifying experience;
- (3) Disclosure of the business' name, address and telephone number;
- (4) Certification and signature by the supervisor(s) that the applicant has been supervised or employed by the supervisor or his or her business/agency for the time period indicated and has gained the experience indicated on this form;
- (5) Disclosure of whether the supervisor is a sole proprietor, partner, shareholder or other CPA and the supervisor's certificate number and the state/authority where the certificate is issued;
- (6) Check "Yes" or "No" as to whether the applicant has obtained demonstrated qualifying experience in 10 different areas demonstrating the ability to understand the requirements of planning and conducting a financial statement audit or performing other attest services with minimum supervision that results in an opinion on full disclosure financial statements;
- (7) Disclosure of whether experience was gained in the following areas: (i) planning the audit or other attest services; (ii) applying a variety of audit procedures; (iii) preparation of work papers; (iv) preparation of written explanations, (v) preparation of

full disclosure financial statements; and, (vi) the number of compilation hours obtained prior to January 1, 2008.

Specifically, Form 11A-6A (5/11) "Certificate of Attest Experience (Public Accounting)" requires:

- (1) Disclosure of full name of applicant and last 4 digits of the Social Security number;
- (2) Disclosure of the dates the applicant was under supervision and obtained qualifying experience;
- (3) Disclosure of the business' name, address and telephone number;
- (4) Certification and signature by the supervisor(s) that the applicant has been supervised or employed by the supervisor or his or her business/agency for the time period indicated and has gained the experience indicated on this form;
- (5) Disclosure of the supervisor's certificate number, the state of issuance and whether the supervisor has an ownership interest in the business;
- (6) Check "Yes" or "No" as to whether the applicant has obtained demonstrated qualifying experience in 10 different areas demonstrating the ability to understand the requirements of planning and conducting a financial statement audit or performing other attest services with minimum supervision that results in an opinion on full disclosure financial statements;
- (7) Disclosure of whether experience was gained in the following areas: (i) planning the audit or other attest services; (ii) applying a variety of audit procedures; (iii) preparation of work papers; (iv) preparation of written explanations, (v) preparation of full disclosure financial statements; and, (vi) the number of compilation hours obtained prior to January 1, 2008.

The proposal also makes other conforming changes.

Factual Basis/Rationale:

Sections 5092(d) and 5093(d) of the Business and Professions Code require applicants for licensure to have one or two years of verified, supervised experience. That requirement has been in effect since 2002. This proposal does not change the requirement, but rather, provides additional clarity as to the nature of the supervisory relationship and how the verification is to be made. This clarity was needed in order that staff and the Qualifications Committee could perform their duties more efficiently. The additional clarity also assists applicants and supervisors to define their relationship.

There are four forms on which verification can be made. Forms 11A-29 and 11A-29A certify the completion of general experience (non-attest). One form is for experience obtained in public accounting and the other in private industry or government. Forms 11A-6 and 11A-6A certify the completion of attest experience. One form is for experience obtained in public accounting and the other in private industry or government. These forms are to be used by applicants for licensure to standardize the information required and collected by the Board.

Forms 11A-29, 11A-29A, 11A-6 and 11A-6A are referenced in these amendments. It would be cumbersome, unduly expensive and otherwise impractical to publish the documents in the California Code of Regulations. They are available on the Board's website and from the Board upon request.

5. Amend Section 98 of Title 16 of the California Code of Regulations

Specific Purpose:

This proposal updates the Board's Disciplinary Guidelines to incorporate by reference the 7th edition of the manual. Those proposed changes include:

- Making technical changes to change the Board's name from "Board" to "CBA" and "Administrative Committee" to "Enforcement Advisory Committee" as well as re-numbering as necessary throughout the Guidelines.
- Adding the words "CONDITIONS OF PROBATION" as a heading after each offense and penalty described in the Guidelines.
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TITLE PAGE:

The Board proposes to update the edition number and revision date on the title page from "6th Edition 2005" to "7th Edition 2011."

INTRODUCTION:

In addition to technical changes, the Board proposes to add language that specifies that the expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy in California, or the voluntary surrender of a license by a licensee shall not deprive the CBA of the authority to proceed with an investigation, action, or disciplinary proceeding against the licensee or to render a decision suspending or revoking the license pursuant to the Section 5109 of the Business and Professions Code.

GENERAL CONSIDERATIONS

In addition to technical changes, the Board proposes to repeal an outdated reference to the ability of the CBA to obtain cost recovery for specific violations if the costs were incurred prior to January 1, 2005.

DISCIPLINARY GUIDELINES (offenses and penalties section)

California Accountancy Act, Article 2 Section

*Adding "continuing education" and "regulatory review course" as new optional terms and conditions of probation for violation of Sections 5037(a) (Ownership of Accountants'

Workpapers), and 5037(b)(1)(2)(Return of Client Documents).

California Accountancy Act, Article 3 Section

* Adding “continuing education” and “regulatory review course” as new optional terms and conditions of probation for violation of Sections 5050(a) (Practice Without a Permit; Temporary Practice), 5055 and 5056(Title of Certified Public Accountant/Title of Public Accountant), 5058 (Use of Confusing Titles or Designations Prohibited), and 5058.1 (Titles in Conjunction with Certified Public Accountant or Public Accountant).

*Adding new offenses and new minimum and maximum penalties for violation of Sections 5050(c) (Practice without a Permit; Temporary Practice; Foreign Accountants) and 5054 (Preparation of Tax Returns by Individuals and Firms Outside of the State) to include minimum penalty of correction of the violation and maximum penalty of revoking authorization to practice.

* Adding new offense and new minimum and maximum penalty for violation of Section 5058.2 (Inactive Designation) to include minimum penalty of correction of the violation and maximum penalty of revocation stayed, 3 years’ probation with new standard and optional conditions of probation.

California Accountancy Act, Article 3.5 Section

* Adding “continuing education” and “regulatory review course” as new optional terms and conditions of probation for violation of Sections 5060 (Name of Firm), 5061 (Commissions), 5062 (Report Conforming to Professional Standards), 5062.2 (Restrictions on Accepting Employment with an Audit Client), 5063 (Reportable Events), and 5063.3 (Confidential Information Disclosure),

*Adding new “peer review” requirement as an optional term or condition of probation for violating Section 5062 (Report Conforming to Professional Standards).

California Accountancy Act, Article 4 Section

*Adding new “continuing education” and “regulatory review course” as new optional terms and conditions of probation for violating Sections 5072(a) (Requirements for Registration as a Partnership), 5073(d) (Partnership Applications (admission or withdrawal of partner)), 5078 (Offices not under Personal Management of Certified Public Accountant; Supervision), and 5079(a) (Non-licensee Ownership of Firms).

*Adding new offenses and new minimum and maximum penalties for violation of Sections 5076(a) (Peer Review) and 5076(f) (Peer Review – Document Submission Requirement) to include minimum penalty of correction of the violation and maximum penalty of revocation. New optional and standard terms and conditions of probation are also listed for each offense, including: suspension with or without stay, supervised practice, restricted practice, ethics continuing education, regulatory review course,

continuing education courses, sample – audit, review or compilation, notice to clients/cessation of practice, and administrative penalty not to exceed maximum set forth in Section 5116.

California Accountancy Act, Article 5 Section

*Adding new “continuing education” and “regulatory review course” as new optional terms and conditions of probation for violating Section 5095(a) (Minimum Number of Attest Services Hours).

California Accountancy Act, Articles 5.1, 5.5 Sections

*Adding new “continuing education” and “regulatory review course” as new optional terms and conditions of probation for violating Sections 5096(e)(3)(Practice Privilege – Practice from Office in this State), 5096(e)(5)(Practice Privilege – Cooperate with Board Inquiry), 5096(g)(1)(Practice Privilege – Disqualifying Conditions), 5096.5 (Practice Privilege – Sign Attest Reports), and 5097 (Audit Documentation).

*Revising the current minimum penalty of revocation stayed, 3 years’ probation for violation of Section 5096(e) to administrative suspension pursuant to Section 5096.4, or, Board approval required before commencing practice under future practice privilege.

*Adding new offenses and new minimum and maximum penalties for violation of Sections 5096.12(a) (Practice Privilege – Limited Firm Practice) and 5096.13 (Firm Information). Minimum penalty for 5096.12(a) violations is revocation stayed, 3 years’ probation and maximum penalty is revocation. Minimum penalty for 5096.13 violations is correction of violation and maximum penalty is revocation of authorization to practice. New optional and standard terms and conditions of probation are also listed for offenses related to violation of Section 5096.12(a), including: suspension, ethics continuing education, regulatory review course, and administrative penalty not to exceed maximum set forth in Section 5112.

California Accountancy Act, Article 6

*Adding new “continuing education” and “regulatory review course” as new optional terms and conditions of probation for violating Sections 5100(a) (Conviction of Any Crime Substantially Related to the Qualifications, Functions, and Duties of a CPA/PA), 5100(b)(Fraud or Deceit in Obtaining License/Permit/Registration), 5100(c) (Dishonesty, Fraud, Gross Negligence or Repeated Acts of Negligence), 5100(d) (Cancellation, Revocation or Suspension by any other State), 5100(e) Violation of Provisions of Section 5097, 5100(h) (Suspension or Revocation of the Right to Practice Before Any Governmental Body), 5100(i) (Fiscal Dishonesty or Breach of Fiduciary Responsibility), 5100(j) (Knowing Preparation or Publication of False, Fraudulent or Materially Misleading Financial Statements), 5100(k)(Embezzlement, Theft, Misappropriation of Funds or Property), 5100(i) (Discipline, Penalty or Sanction by the Public Company Accounting Oversight Board or Securities and Exchange Commission), and 5100(m)

(Unlawfully Engaging in the Practice of Public Accountancy in Another State).

*Adding the words “Felony” or “Several Misdemeanor” to clarify that the minimum and maximum penalties apply when the convictions are “For Felony Convictions or Several Misdemeanor Convictions.”

*Adding the words “Single Misdemeanor” to the clarifying note under Section 5100(a), so that the sentence now reads: “IN THE CASE OF A SINGLE MISDEMEANOR VIOLATION, TAILOR PROBATION TO CIRCUMSTANCES; ADJUSTING THE REQUIRED CONDITIONS ACCORDINGLY AND CHOOSING APPROPRIATE WARRANTED CONDITIONS FROM THE ABOVE LIST.”

California Accountancy Act, Article 9

*Adding new “continuing education” and “regulatory review course” as new optional terms and conditions of probation for violating Sections 5154 (Directors, Shareholders, and Officers must be Licensed), 5155 (Disqualified Shareholder Non-Participation), 5156 (Unprofessional Conduct (Accountancy Corporation)), and 5158 (Practice of Public Accountancy; Management (Accountancy Corporation)).

CBA Regulations (Title 16, California Code of Regulations)

* Adding new “continuing education” and “regulatory review course” as new optional terms and conditions of probation for violating Sections 5 (Observance of Rules), 50 (Client Notification), 51 (Firms with Non-licensee Owners), 51.1 (Notification of Non-licensee Ownership), 52 (Response to Board Inquiry), 53 (Discrimination Prohibited), 54.1 (Disclosure of Confidential Information Prohibited), 54.2 (Recipients of Confidential Information), 56, 56.1, 57, 58, 59, 60, 62, 63, 65, 67, 68, 68.1, 68.2, 68.3, 68.4, 68.5, 69, 75.8, 75.9, 87, 87.5, 87.6, 89, 89.1, and 90.

*Adding new offenses and new minimum and maximum penalties for violations of Sections 32 (Board Approval Required), 33(a) (Changes to Information on Notification), 35 (Continuing Education Requirements), 40(a)-(c) (Enrollment and Participation in Peer Review), 41 (Firm Responsibilities), 43 (Extensions), 44 (Notification of Expulsion), 45 (Reporting to Board), 46(a)-(b) (Document Submission Requirements for Firms that Receive a Substandard Peer Review Rating, a “pass” or “pass with deficiencies” rating), 81(a) (Continuing Education Requirements for Renewing and Expired License), and 87.8 (Regulatory Review Course).

*Deleting the offense and penalties associated with 87.7(a) relating to “Continuing Education in the Accountancy Act, Board Rules and Other Rules of Professional Conduct.”

VIOLATION OF PROBATION

The Board proposes to revise this section to state that the minimum penalty for violations of probation is a citation and fine. The prior minimum penalty of suspension

and/or extension of probation is deleted. The Board proposes to sentence that clarifies that California Code of Regulations Section 95 provides the authority for the Executive Officer to issue citations and fines from \$100 to \$5000 to a licensee for violation of a term or condition contained in a decision placing that licensee on probation. The Board also proposes to delete the current upper range for which a fine may be issued by the Executive Officer from \$2500 to \$5000.

MODEL DISCIPLINARY ORDERS

The Board proposes to revise the current model disciplinary order language for a standard stay order to state: "However, _____ (revocation/suspension) _____ is stayed and respondent is placed on probation for _____ years upon the following terms and conditions..."

STANDARD CONDITIONS OF PROBATION

The Board proposes to amend the current "Violation of Probation" term to add language that specifies that the Board's Executive Officer may issue a citation pursuant to Section 95 of the CBA's regulations for a violation of a term or condition contained in the decision placing that licensee on probation.

OPTIONAL CONDITIONS OF PROBATION

The Board proposes to delete the existing optional term relating to "Ethics Course/Examination" and replace it with a new term entitled "Ethics Continuing Education" that requires the respondent to complete four hours of continuing education in course subject matter pertaining to specified areas. Courses must be a minimum of one hour as described in CBA's regulations section 88.2. If respondent fails to complete said courses, respondent would be required to notify the Board and cease practice until respondent completes such courses. Failure to complete the courses no later than 100 days prior to the termination of probation would constitute a violation of probation.

The Board proposes to add a new "Regulatory Review Course" optional term and condition of probation that requires the respondent to complete a CBA-approved course on the provisions of the California Accountancy Act and regulations specific to the practice of public accountancy. If respondent fails to complete said courses, respondent would be required to notify the Board and cease practice until respondent completes such courses. Failure to complete the courses no later than 100 days prior to the termination of probation would constitute a violation of probation.

The Board proposes to add a new "Peer Review" optional term and condition of probation that requires the respondent, during the period of probation, to have all audit, review and compilation reports subject to peer review by a certified peer reviewer at respondent's expense. Upon completion of the review, respondent would be required to submit a copy of the report with the reviewer's conclusions and findings to the Board.

The Board also proposes to revise current “Continuing Education Courses” term to add the words “specified”, “a designated time” and “shall/shall not be” to clarify that the respondent would be required to provide proper documentation of specified professional education courses within a designated time. Further, this revision would authorize the board to allow or not allow such courses to be counted toward mandatory continuing education requirements for relicensing.

Factual Basis/Rationale:

Existing law, California Government Code Section 11425.50(e), specifies that a penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule unless it has been adopted as a regulation. Section 98 of Title 16 of the California Code of Regulations incorporates by reference the California Board of Accountancy’s “A Manual of Disciplinary Guidelines and Model Disciplinary Orders”. Section 5116 of the Business and Professions Code requires the Board to establish criteria for assessing administrative penalties. In addition, Section 5100 allows the Board the authority to discipline a license. In order to standardize this discipline, and meet the requirement set forth in Section 5116, the Board adopted its Manual of Disciplinary Guidelines and Model Disciplinary Orders. From time to time, this manual is updated and revised. The latest revisions constitute the 7th edition of the manual.

The Board regulates the practice of public accountancy and the protection of the public is the highest priority for the Board in exercising its licensing, regulatory, and disciplinary functions. The Board conducts its own inspections and investigations of licensees and applicants and determines when and how a licensee should be disciplined to protect the public. The Disciplinary Guidelines are necessary to assist the board, deputy attorney generals and administrative law judges to identify and impose appropriate disciplinary action against a licensee or applicant who violates the laws governing the practice of public accountancy.

The California Board of Accountancy’s “A Manual of Disciplinary Guidelines and Model Disciplinary Orders” (7th edition, 2011) is referenced in these amendments. It would be cumbersome, unduly expensive and otherwise impractical to publish the documents in the California Code of Regulations. It is available on the Board’s website and from the Board upon request.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any):

1. “A Manual of Disciplinary Guidelines and Model Disciplinary Orders” (7th edition, 2011);
2. Forms 11A-29 (5/11), 11A-29A (5/11), 11A-6A (5/11) and 11A-6 (5/11).

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/ testimony:

The Board does not believe that this regulatory proposal will have a significant adverse economic impact on businesses as it only affects individuals and those businesses that are disciplined for violations of the Accountancy Act. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The Board considered not including a definition of supervision or incorporating the forms by reference, but this was rejected due to the need for additional clarity about the supervisory relationship. Incorporation of the forms by reference was also deemed necessary to standardize the information that is collected. The Board currently strongly encourages the use of the forms.

The Board considered pursuing legislation to establish the equivalency of certain Master's degrees, but it was determined that, since the authority already exists in the statutes, having it in regulation provided the Board with more flexibility.

The Board considered not updating its Disciplinary Guidelines, but this was deemed unacceptable as the previous version was approved six years ago and new laws made sections of the old guidelines obsolete and other needed sections would be missing.